

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65618; File No. SR-FINRA-2011-061)

October 25, 2011

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Expand the Exception Relating to Transfers of Proprietary Securities Positions in Connection with Certain Corporate Control Transactions

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 14, 2011, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA trade reporting rules to expand the scope of the existing exception for over-the-counter (“OTC”) transfers of proprietary positions in debt and equity securities effected in connection with certain corporate control transactions.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

The text of the proposed rule change is available on FINRA's website at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA trade reporting rules require that OTC transactions in debt and equity securities be reported to FINRA unless they qualify for an express exception under the rules. For purposes of the trade reporting rules, a "trade" or "transaction" entails a change of beneficial ownership of securities between parties (e.g., a purchase or sale of securities) in which a FINRA member participates.⁴ As a general matter, when members report OTC trades, FINRA facilitates the public dissemination of the trade information and/or assesses regulatory transaction fees under Section 3 of Schedule A to the FINRA

⁴ See Trade Reporting Frequently Asked Questions, FAQ 100.4, available at www.finra.org/Industry/Regulation/Guidance/P038942.

By-Laws (“Section 3”)⁵ and the Trading Activity Fee (“TAF”).⁶ Certain transactions and transfers are not reported to FINRA at all (e.g., trades executed and reported through an exchange and transfers made pursuant to an asset purchase agreement that has been approved by a bankruptcy court), while other transactions must be reported to FINRA for regulatory transaction fee assessment purposes only (e.g., away from the market sales).⁷ Members must have policies and procedures and internal controls in place to determine whether a transaction qualifies for an exception under the rules.

Under FINRA trade reporting rules,⁸ there is an exception for transfers of proprietary securities positions between a member and another member or non-member broker-dealer where the transfer (1) is effected in connection with a merger of one broker-dealer with the other broker-dealer or a direct or indirect acquisition of one broker-dealer by the other broker-dealer or the other broker-dealer’s parent company and (2) is not in furtherance of a trading or investment strategy. Members are not required to report such transfers for publication purposes, but must report them to FINRA for

⁵ Pursuant to Section 31 of the Act, FINRA and the national securities exchanges are required to pay transaction fees and assessments to the SEC that are designed to recover the costs related to the government’s supervision and regulation of the securities markets and securities professionals. FINRA obtains its Section 31 fees and assessments from its membership in accordance with Section 3.

⁶ The TAF is one of the member regulatory fees FINRA uses to fund its member regulation activities, market regulation activities, financial monitoring and policymaking, rulemaking and enforcement activities. Among others, the TAF is assessed for the sale of all exchange registered securities wherever executed and OTC equity securities. See FINRA By-Laws, Schedule A, § 1(b)(1).

⁷ See Rules 6282(i) (Alternative Display Facility), 6380A(e) (FINRA/Nasdaq Trade Reporting Facility), 6380B(e) (FINRA/NYSE Trade Reporting Facility) 6622(e) (OTC Reporting Facility), and 6730(e) and 6750 (Trade Reporting and Compliance Engine).

⁸ See Rules 6282(i)(2) and 7130(c); 6380A(e)(2) and 7230A(g); 6380B(e)(2) and 7230B(f); 6622(e)(2) and 7330(g); and Rule 6750(b).

purposes of assessing applicable regulatory transaction fees pursuant to Section 3 and the TAF. Additionally, members must provide FINRA at least three business days advance written notice of their intent to use this exception, including the basis for their determination that the transfer meets the terms of the exception.

FINRA is proposing to expand the scope of this exception to apply to any transfer of proprietary securities positions where the transfer (1) is effected in connection with a merger or direct or indirect acquisition and (2) is not in furtherance of a trading or investment strategy. Thus, the exception would no longer be limited to transfers between a member and another member or non-member broker-dealer effected in connection with a merger or acquisition involving the member or its parent company. However, for purposes of this exception, the distinguishing factor will continue to be whether the transfer is being effected as part of the corporate control transaction rather than being driven by a trading or investment strategy.

For example, a member's parent company acquires a foreign financial institution, and as part of the corporate control transaction, the foreign financial institution's proprietary positions are transferred to the member. Under the proposed rule change, the transfer would not be reported for public dissemination purposes, but would be reported to FINRA for regulatory purposes. By way of further example, a member's parent company acquires two new subsidiaries, both of which are U.S. non-broker-dealer financial institutions, and as part of the corporate control transaction, the proprietary positions of one subsidiary are transferred to the other subsidiary. Both of the subsidiaries have custodial accounts at the member, and the member facilitates the transfer. Under the proposed rule change, the transfer would not be reported for public

dissemination purposes, but would be reported to FINRA for regulatory purposes.

FINRA believes that the policy reasons behind the existing exception support expanding the scope of the exception as proposed herein. While such transfers are “trades” or “transactions” because they result in a change of beneficial ownership, they are unlike the typical securities transaction in that they are not driven by a trading or investment strategy (e.g., a desire to exit a position or lock in a profit) relating to a particular security position. Additionally, the securities being transferred typically are assigned a value, such as the closing price of the security on a date certain, solely for purposes of effectuating the transfer. As such, FINRA believes that public dissemination of such transfers would not provide meaningful price discovery information to the market. To the contrary, dissemination could confuse investors and other market participants, particularly where the positions being transferred are substantial. Public dissemination of significant and perhaps unusual trading activity could give the false impression of investor interest, market participant transactions and significant price discovery activities, and the volume reports could skew a variety of trading activity indicators.

FINRA notes that the other provisions of the existing exception will remain unchanged under the proposed rule change. Specifically, members will continue to be required to provide FINRA at least three business days advance written notice of their intent to rely on this exception, including the basis for their determination that the transfer meets the terms of the exception. They also will continue to be required to report the transfers (for regulatory and not publication purposes) on the same day as the ultimate transfer of the positions on their books and records (unless later reporting is warranted

under specific circumstances).⁹

FINRA has filed the proposed rule change for immediate effectiveness and has requested waiver of the 30-day operative delay. FINRA is proposing to make the proposed rule change operative immediately upon filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁰ which requires [sic], among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will clarify members' trade reporting obligations, enhance the utility of market information and protect investors and other market participants by ensuring that transfers that do not contribute to market price discovery and could confuse market participants are not disseminated.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

⁹ See supra note 8; see also Regulatory Notice 09-21 (April 2009).

¹⁰ 15 U.S.C. 78o-3(b)(6).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

FINRA has requested that the Commission waive the requirement that the rule change, by its terms, not become operative for 30 days after the date of the filing, as set forth in Rule 19b-4(f)(6)(iii),¹³ to allow the trade reporting exception to apply to the broader range of transfers as soon as possible for the benefit of the marketplace and the investing public. FINRA proposes to make the proposed rule change operative immediately upon filing. The Commission has determined that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, because it will allow the trade reporting exception to apply to transfers of securities positions which transfers do not contribute to market price discovery and could confuse investors.¹⁴ Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change to be operative upon filing with the Commission.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2011-061 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2011-061. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website

(<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2011-061 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Kevin M. O'Neill
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).